

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CARLOS EFRAIN LEONEL
GARCIA, an individual, on behalf of
himself and all those similarly
situated,

Plaintiff,

vs.

AUTOVEST, LLC, a foreign limited
liability company;

Defendant.

CASE NO. 2:16-cv-00601-JAD-CWH

ORDER **PROTECTIVE**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential private information, specifically, the names and addresses of putative class members, for which special protection from public disclosure and from use for any other purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; the Court's Local Rules set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c).

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House
5 Counsel (as well as their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information
7 or items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL.”

9 2.5 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained
11 (including, among other things, testimony, transcripts, and tangible things), that
12 are produced or generated in disclosures or responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve
15 as an expert witness or as a consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.8 Non-Party: any natural person, partnership, corporation, association,
20 or other legal entity not named as a Party to this action.

21 2.9 Outside Counsel of Record: attorneys who are not employees of a
22 party to this action but are retained to represent or advise a party to this action and
23 have appeared in this action on behalf of that party or are affiliated with a law firm
24 which has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and
27 their support staffs).
28

1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits
5 or demonstrations, and organizing, storing, or retrieving data in any form or
6 medium) and their employees and subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.
17 However, the protections conferred by this Stipulation and Order do not cover the
18 following information: (a) any information that is in the public domain at the time
19 of disclosure to a Receiving Party as a result of publication not involving a
20 violation of this Order, including becoming part of the public record through trial
21 or otherwise; and (b) any information known to the Receiving Party after the
22 disclosure from a source who obtained the information lawfully and under no
23 obligation of confidentiality to the Designating Party. Any use of Protected
24 Material at trial shall be governed by a separate agreement or order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this action,
3 with or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of
6 time pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection:**

9 Each Party or Non-Party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate
12 for production only those parts of material, documents, items, or oral or written
13 communications that qualify - so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited.

17 Designations that are shown to be clearly unjustified or that have been made for an
18 improper purpose (e.g. to unnecessarily encumber or retard the case development
19 process, or to impose unnecessary expenses and burdens on other parties), expose
20 the Designating Party to sanctions.

21 If it comes to a Party's or a non-party's attention that information or items
22 that it designated for protection do not qualify for protection, that Designating
23 Party must promptly notify all other Parties that it is withdrawing the mistaken
24 designation.

25 **5.2 Manner and Timing of Designations:** Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for
28

1 protection under this Order must be clearly so designated before the material is
2 disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
7 each page that contains protected material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate markings in the
10 margins).

11 A Party or non-party that makes original documents or materials available
12 for inspection need not designate them for protection until after the inspecting
13 Party has indicated which material it would like copied and produced. During the
14 inspection and before the designation, all of the material made available for
15 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
16 identified the document it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this
18 Order. Then, before producing the specified documents, the Producing Party must
19 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.
20 If only a portion or portions of the material on a page qualifies for protection, the
21 Producing Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins).

23 (b) for testimony given in deposition or in other pretrial or trial
24 proceedings, that the Designating Party identify on the record, before the close of
25 the deposition, hearing, or other proceeding, all protected testimony.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent
28

1 place on the exterior of the container or containers in which the information or
2 item is stored the legend "CONFIDENTIAL." If only a portion or portions of the
3 information or item warrant protection, the Producing Party, to the extent
4 practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the Designating Party's right to secure protection under this Order for such
8 material. Upon timely correction of a designation, the Receiving Party must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges: Any Party or Non-Party may challenge a
13 designation of confidentiality at any time. Unless a prompt challenge to a
14 Designating Party's confidentiality designation is necessary to avoid foreseeable,
15 substantial unfairness, unnecessary economic burdens, or a significant disruption
16 or delay of the litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer: The Challenging Party shall initiate the dispute
20 resolution process by providing written notice of each designation it is challenging
21 and describing the basis for each challenge. To avoid ambiguity as to whether a
22 challenge has been made, the written notice must recite that the challenge to
23 confidentiality is being made in accordance with this specific paragraph of the
24 Protective Order. The parties shall attempt to resolve each challenge in good faith
25 and must begin the process by conferring directly (in voice to voice dialogue;
26 other forms of communication are not sufficient) within 14 days of the date of
27 service of notice. In conferring, the Challenging Party must explain the basis for
28

1 its belief that the confidentiality designation was not proper and must give the
2 Designating Party an opportunity to review the designated material, to reconsider
3 the circumstances, and, if no change in designation is offered, to explain the basis
4 for the chosen designation. A Challenging Party may proceed to the next stage of
5 the challenge process only if it has engaged in this meet and confer process first or
6 establishes that the Designating Party is unwilling to participate in the meet and
7 confer process in a timely manner.

8 6.3 Judicial Intervention: If the Parties cannot resolve a challenge without
9 court intervention, the Designating Party shall file and serve a motion to retain
10 confidentiality (and in compliance with this Court's Local Rules, if applicable)
11 within 21 days of the initial notice of challenge or within 14 days of the parties
12 agreeing that the meet and confer process will not resolve their dispute, whichever
13 is earlier. Each such motion must be accompanied by a competent declaration
14 affirming that the movant has complied with the meet and confer requirements
15 imposed in the preceding paragraph. Failure by the Designating Party to make
16 such a motion including the required declaration within 21 days (or 14 days, if
17 applicable) shall automatically waive the confidentiality designation for each
18 challenged designation. In addition, the Challenging Party may file a motion
19 challenging a confidentiality designation at any time if there is good cause for
20 doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be
22 accompanied by a competent declaration affirming that the movant has complied
23 with the meet and confer requirements imposed by the preceding paragraph.

24 The burden of persuasion in any challenge proceeding shall be on the
25 Designating Party. Frivolous challenges, and those made for an improper purpose
26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
27 expose the Challenging Party to sanctions. Unless the Designating Party has
28

1 waived the confidentiality designation by failing to file a motion to retain
2 confidentiality as described above, all parties shall continue to afford the material
3 in question the level of protection to which it is entitled under the Producing
4 Party's designation until the court rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles: A Receiving Party may use Protected Material that
7 is disclosed or produced by another Party or by a Non-party in connection with
8 this case only for prosecuting, defending, or attempting to settle this litigation.
9 Such Protected Material may be disclosed only to the categories of persons and
10 under the conditions described in this Order. When the litigation has been
11 terminated, a Receiving Party must comply with the provisions of section 13
12 below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as
21 well as employees of said Outside Counsel to whom it is reasonably necessary to
22 disclose the information for this litigation and who have signed the
23 "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit
24 A;

25 (b) the officers, directors, and employees (including House Counsel)
26 of the Receiving Party to whom disclosure is reasonably necessary for this
27
28

1 litigation and who signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial
8 consultants, mock jurors, and Professional Vendors to whom disclosure is
9 reasonably necessary for this litigation and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the “Acknowledgment
13 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
14 Designating Party or ordered by the court. Pages of transcribed deposition
15 testimony or exhibits to depositions that reveal Protected Material must be
16 separately bound by the court reporter and may not be disclosed to anyone except
17 as permitted under this Stipulated Protective Order.

18 (g) the author of the document containing the information or a
19 custodian or other person who otherwise possessed or knew the information.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
21 IN OTHER LITIGATION

22 If a Party is served with a subpoena or an order issued in other litigation that
23 compels disclosure of any information or items designated in this action as
24 “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such
26 notification shall include a copy of the subpoena or court order.

1 (b) promptly notify in writing the party who caused the subpoena or
2 order to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification shall
4 include a copy of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served
8 with the subpoena or court order shall not produce any information designated in
9 this action as “CONFIDENTIAL” before a determination by the court from which
10 the subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material - and nothing in these
13 provisions should be construed as authorizing or encouraging a Receiving Party in
14 this action to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:
26
27
28

1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (3) make the information requested available for inspection by the
8 Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this
10 court within 14 days of receiving the notice and accompanying information, the
11 Receiving Party may produce the Non-Party's confidential information responsive
12 to the discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or control that
14 is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court.¹ Absent a court order to the contrary, the Non-Party
16 shall bear the burden and expense of seeking protection in this court of its
17 Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not authorized
21 under this Stipulated Protective Order, the Receiving Party must immediately (a)
22 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
23 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
24 the person or persons to whom unauthorized disclosures were made of all the
25

26
27 ¹ The purpose of this provision is to alert the interested parties to the existence
28 of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity
to protect its confidentiality interests in this court.

1 terms of this Order, and (d) request such person or persons to execute the
2 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
3 A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
5 PROTECTED MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other
8 protection, the obligations of the Receiving Parties are those set forth in Federal
9 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
10 whatever procedure may be established in an e-discovery order that provides for
11 production without prior privilege review. Pursuant to Federal Rule of Evidence
12 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
13 of a communication or information covered by the attorney-client privilege or
14 work product protection, the parties may incorporate their agreement in the
15 stipulated protective order submitted to the court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief: Nothing in this Order abridges the right of
18 any person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections: By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to object on
23 any ground to use in evidence of any of the material covered by this Protective
24 Order.

25 12.3 Filing Protected Material: Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested
27 persons, a Party may not file in the public record in this action any Protected
28

1 Material. A Party that seeks to file under seal any Protected Material must comply
2 with the Court's Local Rules. Protected Material may only be filed under seal
3 pursuant to a court order authorizing the sealing of the specific Protected Material
4 at issue. A sealing order will issue only upon a request establishing that the
5 Protected Material at issue is privileged, protectable as a trade secret, or otherwise
6 entitled to protection under the law. If a Receiving Party's request to file
7 Protected Material under seal pursuant to the Court's Local Rules is denied by the
8 court, then the Receiving Party may file the information in the public record
9 pursuant to the Court's Local Rules unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in
12 paragraph 4, each Receiving Party must return all Protected Material to the
13 Producing Party or destroy such material. As used in this subdivision, "all
14 Protected Material" includes all copies, abstracts, compilations, summaries, and
15 any other format reproducing or capturing any of the Protected Material. Whether
16 the Protected Material is returned or destroyed, the Receiving Party must submit a
17 written certification to the Producing Party (and, if not the same person or entity,
18 to the Designating Party) by the 60 day deadline that (1) identifies (by category,
19 where appropriate) all the Protected Material that was returned or destroyed and
20 (2) affirms that the Receiving Party has not retained any copies, abstracts,
21 compilations, summaries or any other format reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
23 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if
26 such materials contain Protected Material. Any such archival copies that contain
27
28

1 or constitute Protected Material remain subject to this Protective Order as set forth
2 in Section 4 (DURATION).

3
4 PURSUANT TO STIPULATION OF THE PARTIES,
5 **IT IS SO ORDERED.**
6

7
8 DATED: February 2, 2017
9 _____

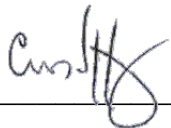
10 
11 UNITED STATES MAGISTRATE
12 JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name), of
 _____ (print or type full address), declare under penalty of perjury
 that I have read in its entirety and understand the Protective Order that was issued
 by the United States District Court for the District of Nevada on _____ (date) in
 the case of *Carlos Efrain Leonel Garcia v. Autovest, LLC*, case no. 1:16-cv-
 00601-JAD-CWH. I agree to comply with and to be bound by all the terms of this
 Protective Order and I understand and acknowledge that failure to so comply
 could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the District of Nevada for the purpose of enforcing the terms of this
 Protective Order, even if such enforcement proceedings occur after termination of
 this action.

I hereby appoint _____ (print or type full
 name) of _____ (print or type full address and
 tel. number) as my Nevada agent for service of process in connection with this
 action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2017, service of the foregoing **[PROPOSED] PROTECTIVE ORDER** was made upon each party in the case who is registered as an electronic case filing user with the Clerk, pursuant to Fed. Rule Civ.P.5(b)(3), and Local Rule 5-4, as follows:

Mitchell D. Gliner
3017 West Charleston Boulevard,
Suite 95
Las Vegas, Nevada 89102
Attorneys for Plaintiff

Daniel A. Edelman
Edelman Combs Lattuner & Goodwin
LLC
20 South Clark Street, Suite 1500
Chicago, IL 60603
Attorneys for Plaintiff

Dan L. Wulz
Sophia A. Medina
LEGAL AID CENTER OF
SOUTHERN NEVADA INC.
725 E. Charleston Blvd.
Las Vegas, NV 89104
Attorneys for Plaintiff

/s/R. Travis Campbell

A partner of
SIMMONDS & NARITA LLP